

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL MALOTT,

Plaintiff,

v.

Case No. 12-cv-14476
Honorable Denise Page Hood

LINCOLN MARSHALL, *et al.*,

Defendants.

ORDER ACCEPTING REPORT AND RECOMMENDATION,
DISMISSING THIS CASE WITHOUT PREJUDICE, AND
DIRECTING REIMBURSEMENT OF FILING FEE

This civil rights action is now before the Court on Magistrate Judge Mark A. Randon's Report and Recommendation recommending dismissal of this matter without prejudice. The Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* Objections to the Report and Recommendation must be timely and specific. *See* Fed. R. Civ. P. 72(b)(2); E.D. Mich. L.R. 72.1(d).

Plaintiff Michael Malott filed this action in both the Eastern District and Western District of Michigan. Venue is proper in the Western District of Michigan given that Plaintiff is housed in a prison in the Western District. Plaintiff explains that he does not object to the dismissal of this action without prejudice. [Docket Nos. 18 and 19] He, however, asks that he is reimbursed

the filing fee for the action in the Eastern District of Michigan.¹ The Court finds no error in the Magistrate Judge's Report and Recommendation and accepts it in its entirety.

Accordingly,

IT IS ORDERED that the Report and Recommendation [Docket No. 15, filed February 6, 2013] is ACCEPTED as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Defendants' Motion to Transfer Venue [Docket Nos. 9 and 10, filed December 28, 2012] is GRANTED IN PART and DENIED IN PART. The Court denies the request to transfer the case to the Western District of Michigan but grants Defendants' alternative request to dismiss the case without prejudice.

IT IS FURTHER ORDERED that Plaintiff's Motions [Docket Nos. 18 and 19] are GRANTED. The Clerk's Office is directed to REIMBURSE the \$350.00 filing fee to Michael Malott's prison account.

IT IS FURTHER ORDERED that Plaintiff's Motion for Appointment of Counsel [Docket No. 17, filed February 20, 2013] is deemed MOOT.

IT IS FURTHER ORDERED that this action is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: April 16, 2013

¹Plaintiff requests appointment of counsel. Given that the Court is not the proper venue for this matter, Plaintiff may re-file his request in the Western District action. Further, any motions filed in this matter are also dismissed without prejudice. Any further requests for court action may be filed in the Western District action.

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 16, 2013, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager